United Food and Commercial Workers Union, Local 4, affiliated with United Food and Commercial Workers Union *and* Pamela Barrett. Case 19–CB–9660

August 26, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND BECKER

On October 31, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 353 NLRB 469.[1] Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Ninth Circuit. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[2]

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 353 NLRB 469, which is incorporated by reference.[3]

Dated, Washington, D.C. August 26, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

[2] Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

[3] Member Becker writes separately to express the view that the Board should consider, in an appropriate case, whether the Board's holding in *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999), should be read to permit the financial disclosure in a union's notice to be verified by an audit that relies on expenditure information provided by the union to the Department of Labor (DOL) in satisfaction of the union's financial disclosure obligations under the Labor Management Reporting and Disclosure Act. See 29 U.S.C. § 431. The Board held in *KGW Radio* that the auditor must independently verify "that the expenditures claimed were actually made" rather than accept "the representations of the union." Id. at 477. A union's statutorily required report to the DOL is more than the mere "representations of the union," however, as it must be signed by a union's president and treasurer (or corresponding principal officers) who are subject to criminal and civil penalties for false reporting and filing violations. See 29 U.S.C. §§ 431(b), 439, and 441. Sound Federal labor policy should seek, if possible, to reconcile the overlapping financial disclosure requirements that different Federal statutes impose on unions in order to fully fulfill the purposes of the disclosure requirements while not imposing unnecessary burdens on unions, particularly small, local unions, which may detract from their ability to fully and vigorously fulfill their duty to fairly represent employees.